IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12595 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHENDRABHAI GORDHANBHAI BAROT

Versus

STATE OF GUJARAT

Appearance:

MR HM PARIKH for Petitioner No. 1

MR.HEMANG H PARIKH for Petitioner No. 1

Mr.V.M.Pancholi,AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 14/02/2003

ORAL JUDGEMENT

1. By filing this petition, the petitioner has challenged the order of detention dated 5-9-2002 passed against him by the District Magistrate, Kheda, Nadiad, whereby the petitioner has been detained under subsection 2 of Section 3 of the Prevention of Black Marketing and

Maintenance of Supplies of Essential Commodities Act, 1980 ("PBM" for short).

2. The grounds of detention served upon the petitioner alongwith the order of detention indicate that the petitioner is the Secretary of a Co-operative Society known as "Salun Seva Sahakari Mandali" holding a licence for running a fair price shop. It is alleged against the petitioner that at the time of inspection at the said fair price shop on 30-9-2002, it was found that the shop was not open, and therefore, seal was affixed and thereafter statement of certain persons were recorded. On further scrutiny, the department found that four barrels of kerosene was transported from the said Co-operative Society on 29-8-2002 at midnight and the truck was unloaded at Nutan Tiles factory compound. On scrutiny, it was further revealed that two barrels of unauthorized kerosene were found at an isolated place outside the compound of the said factory, and the same was seized by the department. Thereafter, on 1-9-2002 when the seal affixed on the shop no.1 and 2 was open in the presence of the petitioner a deficit of 1626 litres of kerosene was found. During inspection, it was found that the petitioner was on leave from 27-8-2002 to 31-8-2002. It is alleged against the petitioner that at the time when he went out of station he instructed his brother Kishore Gordhanbhai Barot to manage the affairs of the shop. It is also alleged against the petitioner that being the Secretary of the Society he is responsible for the aforesaid irregularity noticed at the time of inspecting the shops in question. It is also mentioned in the order that the petitioner has also admitted in his statement dated 1-9-2002 that on 28-8-2002, there is an income in respect of sale of kerosene to the tune of 3000 litres. It also alleged against the petitioner that as per his instructions his brother Kishore and one Maganbhai Parmar has carried out the distribution of kerosene. The petitioner is accordingly detained by way of preventive detention under the "PBM" on the aforesaid ground by passing the detention order in question which is under challenged by way of this petition.

3. The petitioner-detenu has challenged the order of detention on various grounds. At the time of hearing of the petition, Mr. Parikh, leanred Advocate for the petitioner has submitted that the petitioner is merely a Secretary and only on that ground he has been detained under preventive detention. He further submitted that the detention order was also passed against the Chairman of the Society i.e. Ramshanker Manibhai Thakkar as well as the brother of the petitioner Kishorebhai Gorhdanbhai

Barot. It is submitted that the petitioner was in fact on leave for the period from 26-8-2002 to 30-8-2002 and without any material on record the authority has passed the detention order. During the course of his submissions, learned AGP Mr. Pancholi has made a statement that the State Government has revoked the detention order of the Chairman of the Society as well as the brother of the petitioner one Kishorebhai upon the recommendation of the Advisory Board and they were released. It is submitted that in their case, the Advisory Board was of the opinion that the Chairman of the Society cannot be made responsible for the irregularity of the Co-operative Society as he cannot be said to be in charge of the day to day affairs of the Society. Similarly, so far as the detention order against the brother of the petitioner one Kishore is concerned also, the Advisory Board recommended his release as the Advisory Board was of the opinion that the said Kishore was in charge of the affairs of the society only for a few days during which period the incident in question happened and on that ground the detention order of both these persons were revoked by the State Government.

4. It is required to be noted that at the relevant point of time, the petitioner was on leave and the said fact is not in dispute and during that period his brother was found to have committed such irregularity. Mr. Pancholi, learned AGP has also fairly stated that so far as the detention order against the Chairman as well as the brother of the petitioner is concerned, there is reference about the role played by them, according to which, they were instrumental in transporting the barrels of kerosene on the relevant date i.e. 29-8-2002. Apart from the aforesaid aspect of the matter, the present petitioner even considering that being a Secretary of the Society it is expected of him to manage the affairs of the Society in an appropriate manner and accordingly the detention order is tried to be justified on that ground. However, it is required to be noted that the incident in question by which the so called transport of kerosene barrels were found to have taken place is dated 29-8-2002. It is not in dispute that the petitioner was not on duty at the aforesaid fairprice shop on the said day as he was on leave for five days. There is no mention in the detention order that even though the petitioner was on leave, in which manner he has played any role on the relevant date. The authority has considered the shortfall by taking into account the quantity of kerosene at both the fair price shops. As argued by Mr.Parikh, the authority has come to the

conclusion that there is shortfall of 1626 litres which is the total shortfall in respect of both the shops, but the bill books of shop no.2 has not been taken into account at all and that part of the material is not taken into consideration by the detaining authority. In fact this part of the argument is not in dispute also. In my view, the detaining authority has failed to consider the most vital material which amounts to non application of mind on the part of the detaining authority. Thus, considering the two important aspects, namely, non consideration of the bill books of shop no.2 as also the fact that the petitioner was on leave at the time when the incident in question had taken place, I am constrained to hold that the order of detention suffers from the vice of non application of mind which has vitiated the subjective satisfaction of the detaining authority rendering the impugned order invalid. Therefore, on this ground alone, the order of detention is liable to be quashed and set aside.

5. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 5-9-2002 passed by the District Magistrate, Kheda, Nadiad, against the petitioner-detenu is hereby quashed and set aside. The petitioner-detenu-Mahendrabhai Gordhanbhai Barot is ordered to be released forthwith, if not required in any other case. Rule is made absolute accordingly.

(P.B.Majmudar,J.)

stanley-pbm..